

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION**

FILED
OCT 31 2016

CLERK

JEFF NAAKTGEBOREN, Plaintiff, v. VERMEER EQUIPMENT OF SOUTH DAKOTA, INC., a Nebraska Corporation, KEVIN KLEIN, and TOMI KLEIN, Defendants.	No. <u>16-cv-4153</u> Removed from the Circuit Court of Lincoln County, South Dakota 49-CIV-16-000377
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NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendants Vermeer Equipment of South Dakota, Inc., Kevin Klein, and Tomi Klein file this Notice of Removal. As grounds for removal, Defendants respectfully state as follows:

1. Vermeer Equipment of South Dakota, Inc., Kevin Klein, and Tomi Klein are Defendants in a civil action pending in the Second Judicial Circuit Court in Lincoln County South Dakota entitled "*Jeff Naaktgeboren v Vermeer Equipment of South Dakota, Inc., a Nebraska Corporation, Kevin Klein, and Tomi Klein*," Case No. 41CIV.16-377 (the "State Court Action").
2. All of the Defendants join in and consent to the removal of this action from state court to federal court.
3. The State Court Action was commenced with the filing of a Complaint and Jury Demand. Corporate Counsel for Vermeer Equipment of South Dakota, Inc. was personally served on September 29, 2016. Kevin Klein, husband of Tomi Klein, was personally served on October 3, 2016. As such, this Notice of Removal is timely filed under 28 U.S.C. § 1446(b).

4. The Complaint and Demand for Jury Trial filed in the State Court Action includes claims for breach of a Stock Restrictive Agreement (Exhibit B to the Complaint and Demand for Jury Trial, which is attached to this pleading as Exhibit 1) and an Employment Agreement (Exhibit A to the Complaint and Demand for Jury Trial). Both of the written agreements include provisions stating that the validity, interpretation, construction, performance, and enforcement of the agreements shall be governed by the laws of the state of Nebraska.

5. The Complaint and Demand for Jury Trial filed in the State Court Action also includes claims for relief under state law, and the State Court Action is a civil action which is properly removable to this Court by the defendants.

6. The Complaint and Demand for Jury Trial filed in the State Court Action alleges at ¶ 1 that Plaintiff is a resident of Sioux Falls, Minnehaha County, South Dakota.

7. The Complaint and Demand for Jury Trial filed in the State Court Action correctly states at ¶ 2 that Vermeer Equipment of South Dakota, Inc. is a closely held corporation incorporated under the laws of Nebraska. Vermeer Equipment of South Dakota, Inc.'s principal office address and place of business is 5700 N 70th in Lincoln, Nebraska.

8. The Complaint and Demand for Jury Trial filed in the State Court Action correctly states at ¶ 8 that Defendants, Mr. and Mrs. Kevin and Tomi Klein are residents of Nebraska.

9. Defendants understand the amount in controversy exceeds \$75,000, although Plaintiff has not specifically plead the amount of his claimed damages.

10. This Court has original jurisdiction over this matter under 28 U.S.C. § 1332 because there is complete diversity of citizenship between the Plaintiff and all Defendants in this

matter and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

11. Defendants hereby remove this action to the United States District Court for the District of South Dakota. Removal to this Court is proper pursuant to 28 U.S.C. § 1441(a) because this district and division embrace the place where the State Court Action is pending.

12. Attached hereto as Exhibit 1 are copies of all process and pleadings served upon Defendants.

13. Defendants will promptly give the Plaintiff written notice of the filing of this Notice of Removal as required by 28 U.S.C. § 1446(d).

14. Defendants will promptly file a copy of this Notice of Removal with the Clerk of the Second Judicial Circuit Court in Lincoln County, South Dakota, where this action is currently pending, also pursuant to 28 U.S.C. § 1446(d).

WHEREFORE, Defendants hereby remove the action entitled "*Jeff Naaktgeboren v. Vermeer Equipment of South Dakota, Inc., a Nebraska Corporation, Kevin Klein and Tomi Klein*," Case No. 41CIV.16-377 in the Second Judicial Circuit Court in Lincoln County, South Dakota, to the United States District Court for the District of South Dakota, Southern Division.

DATED this 28th day of October, 2016.

HEIDMAN LAW FIRM, L.L.P.

By:


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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

The undersigned certifies that on October 28, 2016, a copy of the foregoing instrument was mailed to the United States District Court for South Dakota. Notice of this filing will be sent to all parties via U.S. Mail.



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